

Claimant, on the other hand, requests the Appeals Board (Board) to affirm the ALJ's preliminary hearing Order with the exception that claimant stipulated he was not entitled to temporary total disability benefits until January 14, 2002, instead of January 12, 2002, the date ordered by the ALJ.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the parties' briefs, the Board makes the following findings and conclusions:

Claimant injured his left wrist on April 27, 2001, while working for respondent. Respondent provided medical treatment for claimant's left wrist injury through orthopedic surgeon Bernard F. Hearon of Wichita, Kansas.

Dr. Hearon first saw claimant on May 10, 2001. Claimant provided Dr. Hearon with a history of injuring his right wrist while pulling on a wrench at work. After examining the claimant, Dr. Hearon's diagnostic impression was post-traumatic left wrist ulnar sided pain and possible left TFC (triangular fibrocartilage) tear. Dr. Hearon prescribed medication and placed claimant in a removable splint while at work. He also had claimant undergo a diagnostic arthrogram of the left wrist.

Although the arthrogram was normal, clinically Dr. Hearon diagnosed left wrist distal ulnar instability. On August 13, 2001, Dr. Hearon performed diagnostic arthroscopic surgery of the left wrist followed by a left wrist arthroscopic distal ulnar thermal stabilization.

On November 13, 2001, Dr. Hearon returned claimant to modified work of limited lifting to 5 pounds and for claimant to use a splint while working. Dr. Hearon instructed claimant to return in three months for further examination and evaluation.

But respondent returned claimant to regular work without restrictions on December 7, 2001. While claimant was performing his regular work on January 14, 2002, he reinjured his left wrist while he was drilling holes. The drill bit caught jerking his left wrist around and something popped in the wrist. Claimant immediately notified his supervisor of the injury and respondent instructed claimant to contact Dr. Hearon for an appointment.

Claimant saw Dr. Hearon the next day on January 15, 2002. Claimant provided Dr. Hearon with a history of reinjuring his left wrist at work. Dr. Hearon found no significant reinjury and released claimant to return to work without restrictions. He also instructed claimant to return to see him as needed.

Claimant testified that Dr. Hearon was upset at the time he examined claimant on January 15, 2002. According to the claimant, Dr. Hearon told him that if respondent was not going to accommodate the restrictions that he had placed on claimant's work activities there was nothing more that he could do for claimant.

Claimant returned to respondent with Dr. Hearon's release but told respondent he did not think he could return to work because of the pain in his left wrist. Claimant's supervisor also agreed and sent claimant home. As of the date of the preliminary hearing, claimant had not returned to work for respondent or any other employer.

At the request of respondent's insurance carrier, claimant was examined and evaluated by orthopedic surgeon E. Bruce Toby, M.D. of Kansas City, Kansas on March 8, 2002. Dr. Toby had Dr. Hearon's previous medical treatment records for review. Dr. Toby's diagnostic impression was continued left wrist distal radioulnar joint problems with some probable minor levels of instability. Dr. Toby opined that claimant had two options, either live with his current left wrist problems and be rated and released or have repeat arthroscopic surgery to assess the continued instability of the wrist. Dr. Toby released claimant to return to work with restrictions of "no lifting, gripping, or pushing greater than 25 pounds with right (sic) arm .

Based on claimant's testimony and Dr. Toby's March 8, 2002, medical report, the Board concludes claimant suffered a reinjury of his left wrist on January 14, 2002, while working for the respondent. Having made that conclusion, the Board finds the issue of whether claimant was temporarily and totally disabled from January 14, 2002, through March 8, 2002, is not a preliminary hearing issue that the Board, at this juncture of the proceedings, has jurisdiction to review.¹ Accordingly, the Board finds the ALJ's preliminary hearing Order should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Board that ALJ Jon L. Frobish's April 12, 2002, preliminary hearing Order should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of June 2002.

BOARD MEMBER

c: Tom Warner, Attorney for Claimant
William L. Townsley, III, Attorney for Respondent
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Workers Compensation Director

¹ See K.S.A. 44-534a(a)(2).